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From:

Account Name : PHOENIX LAW PARTNERS, P.A.
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PAGELLI'S RESTAURANT LLC

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COVER LETTER

TO: Registration Section
Division of Corporations

SUBJECT: Pagelli's Restaurant LLC

(Name of Limited Liability Company)

The enclosed Articles of Amendment and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to the following:

Holly A Bower, Esq.

(Name of Person)

Phoenix Law Partners, PA

(Firm/Company)

12800 University Drive, Suite 260

(Address)

Ft Myers, FL 33907

(City/State and Zip Code)

For further information concerning this matter, please call:

Holly Bower

(Name of Person)

at (239) 461-0101

(Area Code & Daytime Telephone Number)

Enclosed is a check for the following amount:

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☐ \$60.00 Filing Fee,
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MAILING ADDRESS:
Registration Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

STREET/COURIER ADDRESS:
Registration Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

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TALLAHASSEE, FLORIDA

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**AMENDED AND RESTATED ARTICLES OF ORGANIZATION
For a Domestic Limited Liability Company**

Pursuant to Section 608.411(3) of the 2001 Florida Statutes, the undersigned executes the following articles ("Articles"), all to be effective upon filing, for purposes of amending and restating the Articles of Organization of Pagelli's Restaurant LLC, a limited liability company formed under the laws of the State of Florida, to wit Chapter 608 of the 2001 Florida Statutes, ("the Company"), and originally filed with the Florida Department of State on the 2nd day of May 2006:

ARTICLE I

The name of the limited liability company is:

PAGELLI'S RESTAURANT LLC

ARTICLE II

The principal office shall be located at
**12800 University Drive, Suite 260, in the city of Fort Myers, State of Florida,
with the postal zip code being 33907.**

The mailing address is
12800 University Drive, Suite 260, Fort Myers, Florida 33907.

ARTICLE III

The Company may engage in any restaurant, food service or related activity permitted by the Act, as well as the other laws of the State of Florida, subject always to the limitations of all other jurisdictions in which the Company acts and to the terms and conditions of this Operating Agreement, so long as the activities are reasonably necessary or useful in the furtherance of the Company's business interests.

ARTICLE IV

The Company shall adopt an operating agreement that conforms to these Articles by unanimous consent of the initial members ("Operating Agreement"). The Operating Agreement shall always be construed to conform to these Articles or, if any paragraph or section of the Operating Agreement cannot be reasonably construed to conform to these Articles, each offensive paragraph and/or section of the Operating Agreement shall be stricken as if it had never been adopted into the Operating Agreement so that the Operating Agreement conforms to these Articles. The Operating Agreement shall otherwise be amendable and/or address matters not specifically precluded by these Articles. This Article controls all contradictory provisions of the other Articles, if any.

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ARTICLE V

The Company shall act under the direction of the members (each a "Member"), always pursuant to these Articles and the Operating Agreement.

ARTICLE VI

The membership interests in the Company shall be of one class, each membership interest maintaining voting rights proportional to the Member's membership interest. Equity, profits and losses shall be allocated and distributed in accordance with the Operating Agreement.

Except because of the provisions governing the admittance of new Members by unanimous vote, each Member shall have preemptive rights to purchase membership interests in cash pro rata based on the Member's proportional voting rights pursuant to any offering by the Company.

If adopted by the Members, the membership interests may be further limited by encumbrances arising from the Member shortfall provisions of the Operating Agreement. The Operating Agreement will contain mandatory cash call provisions as specified in the Operating Agreement on the Operating Agreement's effective date.

The membership interests shall have no other limitations other than those specifically mandated by the *Florida Limited Liability Company Act* or as specified in these Articles or the Operating Agreement.

ARTICLE VII

Except as provided in Section 3.3 (Mandatory Cash Call Provision) of the Operating Agreement, the membership interests shall be limited in that all membership interests, including every portion thereof, shall be subject to the Company's right of first refusal ("Right of First Refusal"). Notwithstanding any provision in this Operating Agreement to the contrary, a Member may sell the Member's Membership Interest to any Legal Person, whether or not a Member, pursuant to the following terms and conditions:

- (a) If a Selling Member wants to accept a qualified written offer to purchase any portion of the Member's Membership Interest, then the Selling Member will first make an Offer to the Company including:
 - (1) the name and address of the Proposed Transferee and, if the Proposed Transferee is a legal entity, the principals and upstream entities of the Proposed Transferee to the extent necessary to identify all natural Related Persons having ultimate ownership;
 - (2) an offer to sell the Membership Interest to the Company specifying the same terms and conditions, including price, as

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those on which the Selling Member proposes to sell the Membership Interest to the Proposed Transferee; and
(3) legible copies of all offer and contract documents existing between the Selling Member and the Proposed Transferee.

- (b) The Company will have the option, exercisable by written notice given to the Selling Member within thirty (30) calendar days of the Offer Date, to purchase all, but not less than all, of the Selling Member's Membership Interests offered for sale upon the terms and conditions set forth in the Offer, or as otherwise provided in this section. If the Company does not elect to purchase all of the Membership Interests subject to the Offer, then any purported exercise of the Company's option will be void, and all, but not less than all, of the Membership Interests subject to the Offer may be sold by the Selling Member to the Proposed Transferee at any time within one hundred twenty (120) calendar days after the Offer Date upon terms and conditions no more favorable to the Proposed Transferee than those specified in the Offer. If the Membership Interests subject to the Offer are not sold to the Proposed Transferee within one hundred twenty (120) calendar days after the Offer Date, the Membership Interests subject to the Offer will again be subject to the restrictions set forth in this article.
- (c) The ROFR Closing will be held at the Company's principal office on a mutually acceptable date not more than ninety (90) calendar days after the written notice of acceptance of the Offer is given by the Company. The Company will pay the purchase price at the ROFR Closing by wire transfer at the Selling Member's direction.

It is a condition precedent to the sale of any Membership Interest by a Selling Member to the Proposed Transferee that the Proposed Transferee execute and deliver to the Non-Selling Members an agreement acknowledging that the Membership Interests transferred to the Proposed Transferee are and will be subject to the terms and conditions of the Operating Agreement, including but not limited to, the terms and conditions of Article X of the Operating Agreement.

All capitalized terms used in this Article will have the meanings ascribed to them in the Operating Agreement on the Operating Agreement's effective date

ARTICLE VIII

In accordance with the distribution rules of the Operating Agreement, the Company shall distribute to the Members, prior to the fifteenth (15th) day of the calendar month following the close of each calendar quarter, or as soon thereafter as possible as in accordance with the *Internal Revenue Code of 1986, as amended*, ("IRC"), ("Tax Distribution Date") the amount that the Company will distribute to the Members on the Tax Distribution Dates, and is fifty percent (50%) of the lesser of (i) the Net Cash Flow, as defined infra, if any; or (ii)

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"Ordinary business income (loss)," as defined by and calculated in accordance with the IRC on Department of the Treasury, Internal Revenue Service Form 1065, U.S. Return of Partnership Income multiplied by the highest income tax rate set forth in IRC 1 (but in no event will the Company make a negative distribution as a result) ("Tax Distribution"). The Members may forego or reduce the Tax Distribution for any particular Tax Distribution Date upon a unanimous vote within thirty (30) days of the particular Tax Distribution Date for which the Members consider foregoing or reducing a Tax Distribution; but, the Tax Distribution requirements of this Article shall never be waived, estopped or otherwise prevented by any preceding election by the Members to forego or reduce a Tax Distribution.

"Net Cash Flow" means the lesser of (i) the net change of the Company's cash balances during the prior taxable year calculated in accordance with generally accepted accounting principles; and (ii) the Company's cash balances at the end of the year, less reasonable reserves for working capital and projected cash requirements, including projected expenses and contingent liabilities, but not including capital investments and reinvestments that are not necessary to the Company as a going concern, all calculated in accordance with generally accepted accounting principles as limited by the IRC. The balance of Net Cash Flow, if any, may be distributed to each Member in proportion to the Membership Interests at times and in amounts as Members determine in accordance with the Operating Agreement.

Members may, by a majority Vote, compel the Company to make distributions of specified amounts and property, and at specified times.

No withdrawing Member is entitled to receive any distribution or the value of the Member's Membership Interest as a result of withdrawal from the Company prior to the Company's liquidation, except as specifically provided in the Operating Agreement.

No Member is entitled to the return of, or interest on, that Member's capital contributions, except as otherwise provided in the Operating Agreement.

ARTICLE IX

The Company shall exist in perpetuity, unless dissolved pursuant to the *Florida Limited Liability Company Act* or as provided in the Operating Agreement.

ARTICLE X

All documents evidencing membership interests shall clearly bear legends indicating that the membership interests are issued subject to restrictions on transferability, in reliance upon the existence of exemptions from federal and state securities laws and with other rights, limitations, preferences and elections as expressed in these Articles.

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ARTICLE XI

Additional Members may be admitted to the Company upon the unanimous vote of all of the Members of the Company.

ARTICLE XII

The Articles may only be amended, superseded or repealed upon the unanimous vote, or unanimous, written, affirmative consent, of all of the Members.

ACKNOWLEDGMENT

I, Managing Member of the Company, and without personally assuming or ratifying any prior contracts or promises made on behalf of the Company by any person or entity prior to the Company's formation, if any, execute these Articles this 30th day of September 2006.

Ozworks Enterprises, LLC,
a limited liability company formed under
the laws of the State of Florida,

By: 
Richard Osborne, its Managing Member

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FROM PHOENIX LAW PARTNERS

(MON)OCT 9 2006 12:27/ST. 12:24/No. 6660277370 P 8

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PAGELLI'S RESTAURANT LLC
Membership Listing

The Initial Members of the Company are:

Cangialosi Management LLC
Ozworks Enterprises LLC
Serafina Properties LLC
AT Management LLC
National Property Development LLC

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